

REMARKS

Entry of the foregoing amendment and reconsideration and withdrawal of the final rejection with respect to all of the claims now remaining in the application (i.e., Claims 18-22) is respectfully requested in view of the following remarks.

At the outset, Applicant notes with appreciation the Examiner's withdrawal of all previous grounds of rejection. As will be discussed in detail hereinafter, it is respectfully submitted that Claims 18-22 are patentably distinguishable over the new combination of references set forth in the final Office Action.

Concerning initially the objection to Claim 23, this claim has been cancelled to resolve the objection thereto.

Turning now to the 103 rejection of the claims, in each new ground of rejection the Examiner has relied upon a newly cited reference to ^{Dykstra} Dickey which the Examiner states discloses "a beverage container holder (Fig. 1) including a plurality of retaining members (46, 48) having a V-shaped profile when viewed in a vertical with the point of the V extending toward the central opening." The Examiner further states that "it would be obvious... to have modified the resilient fingers to have a V-shaped profile because one would have been motivated to provide a means for securely holding the container as taught by Dykstra (col.2, line 64 ff.). However, as more fully discussed

below, Dykstra neither discloses a plurality of retaining members having a V-shaped profile when viewed in a vertical plane with the point of the V extending towards a central opening nor suggests modifying resilient fingers to have a V-shaped profile.

First of all, the protrusions 46 and 48 are not retaining members in the sense of resilient fingers as presently claimed. The patentee refers to them as "opposing triangular protrusions that project inwardly into oval recess 26." The projections 46 and 48 are configured to hold a mug 46 in a first recess 28, or alternatively, to separately hold a soda can in second recess 30. The intention of the patentee was to provide a beverage container without moving parts which could retain containers having different shapes and sizes (note: col. 1, lines 4-29). To accomplish this, the container holder has a somewhat oval recess having sidewalls 25 and 27 that define a pair of offset and overlapping cylindrically shaped recesses 28 and 30. The first recess 28 has a relatively large diameter and a short depth for supporting a coffee mug whereas the second recess 30 has a relatively smaller diameter and is deeper for supporting a soda can or coffee cup (note: col. 2, lines 28-37). The triangular protrusions simply provide sidewalls to these two cylindrical recesses that essentially define a portion of the circular profile of the two overlapping cylindrically shaped recesses. By overlapping the cylindrical recesses in this way, the patentee indicates that he can reduce the amount of space occupied by the dual container holder, thus conserving space in the vehicle passenger compartment (note: col. 2, lines 52-55).

It is clear from the foregoing that the triangular protrusions 46, 48 are only to be considered as retaining members in the sense that they form portions of the sidewall 32, 34 of the cylindrical recesses. Comparable structure in Hartmann et al. would be sidewall or so-called joining member 15; the comparable structure in Miller et al. would be the sidewall of circular slots 31, 41, and in Lorence et al. the comparable structure would be the sidewalls of the recesses 68. There is no disclosure whatsoever in Dykstra of equating the triangular protrusions which form a solid sidewall of the cylindrical recesses with resilient fingers as suggested in the Office Action.

Moreover, the triangular protrusions do not have a V-shaped profile when viewed in a vertical plane. As can be seen in Fig. 1 of the present application, when viewed in the vertical plane of the holder, the V-shaped fingers have a V-shaped profile. In contrast thereto, as shown in Fig. 4 of Dykstra, the protrusion 46 in the vertical plane would have a rectangular shaped profile if viewed from the side (see comparison sketch attached hereto as Exhibit A which shows a side elevational view (2a-2a) taken along the vertical plane (2b-2b) of the holder). It is only when viewed from above as shown in Fig. 3 that the protrusions have a so-called "triangular profile", but this is only viewable via a horizontal plane.

Furthermore, contrary to the position taken by the Examiner, while the triangular protrusions project inwardly into recess 26, they do not project into the center of the

intended cylindrical wells or recesses 36 and 38 as can be seen from the comparison sketch of Fig. 3 attached hereto as Exh. B. According to the claimed invention, it is important that the resilient V-shaped fingers extend towards the center of the rectangular opening so that it will hold a cup centered therein. Triangular protrusions 46 and 48 offer no such function and are simply intended as sidewalls for the overlapping cylindrical wells.

Basically, the teachings of Dykstra offer no assistance whatsoever in suggesting any modifications to either of the two main references relied upon by the Examiner, namely-Hartmann and Lorence nor the secondary references employed in connection therewith. The Dykstra container holder is intended for a beverage container which can accommodate two differently sized containers by overlapping the two cylindrically wells thereof via non-moving, solid triangular protrusions 46 and 48. This teaching is totally foreign to the teachings of the proposed invention which employs V-shaped resilient fingers and would require a grossly distorted interpretation of the Dykstra teachings to so modify the other references. Consequently, it is respectfully submitted that such a reconstruction is improper as it grossly distorts the fair teachings of the newly cited reference.

As to the other references cited by the Examiner, these have been discussed several times in prior responses. Applicant relies upon the previously-submitted arguments with respect to such references but for the sake of brevity, they are not repeated here.

In view of the foregoing, it is respectfully submitted that the cited patents neither disclose nor suggest the invention as presently claimed. Accordingly, reconsideration and withdrawal of the final rejection and allowance of the claims at an early date are earnestly solicited.

Respectfully submitted,

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Enclosures: Exhibits A and B

I hereby certify that this correspondence is being deposited with the United States Postal Service as first-class mail in an envelope addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on May 5, 2003.

By: 

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